

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LINDSAYCA USA, INC.	§	
	§	
Plaintiff	§	
v.	§	Civil Action No.: 4:21-cv-00037
	§	
PETROLEOS DE VENEZUELA, S.A.	§	
PDVSA SERVICES, INC. and	§	
BARIVEN S.A.	§	
	§	JURY TRIAL DEMANDED
Defendants	§	

PDVSA SERVICES, INC.'s. MOTION TO DISMISS PURSUANT TO RULE 12(b)6

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant PDVSA Services, Inc. (“PSI”), prior to filing a responsive answer to Plaintiff’s complaint, files this Motion to Dismiss Pursuant to Rule 12(b)6 and would show the court as follows:

Introduction

1. In brief and in summary, Plaintiff’s claim, based on the pleadings and allegations made in its Original Complaint, is barred by limitations relating to breach of contract and quantum meruit. As such, taking all of Plaintiff’s allegations as true, this lawsuit should be dismissed for a failure to state a claim for which relief may be granted.

Argument and Authorities

2. Plaintiff Lindsayca USA, Inc. has filed this lawsuit alleging the failure to pay invoices pursuant to various purchase orders, citing both breach of contract and quantum meruit causes of action. As alleged in Plaintiff’s Complaint, the invoices in particular were to be delivered in Houston, Texas, delivery was to be in Houston, Texas and payment was to be in Houston, Texas.

(See Plaintiff's Complaint for Damages, paragraph 11). Plaintiff is alleged in preamble to be a Texas Corporation.

3. The law of the State of Texas applies to the claims and causes of action brought by Plaintiff.
4. The statute of limitations for breach of contract is four years. Tex. Civ. Prac. Remedies Code §16.004. The statute of limitations for a cause of action for quantum meruit is also four years. *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 461 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

5. Plaintiff summarizes the outstanding invoices in paragraph 21 of the Complaint:

<u>Invoice</u>	<u>Date</u>	<u>Amount Due</u>	
Invoice No. 1673	3/21/13	\$107,106.60	(<i>Composite Exhibit "A"</i>)
Invoice No. 1712	7/31/13	\$26,786.28	(<i>Composite Exhibit "B"</i>)
Invoice No. 1724	11/12/13	\$755,866.70	(<i>Composite Exhibit "C"</i>)
Invoice No. 1741	1/14/14	\$3,248,465.66	(<i>Composite Exhibit "D"</i>)
Total		<u>\$4,138,225.24</u>	

Each of the dates identified by Plaintiff indicate that the invoice is well more than four years prior to the filing of this lawsuit. All of Plaintiff's claims are barred by limitations.

WHEREFORE, PREMISES CONSIDERED, Defendant PSI prays that this court dismiss this lawsuit, and for other relief, for a failure to state a claim for which relief may be granted.

Respectfully submitted,
THE AKERS FIRM, PLLC

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing instrument has been served on all counsel of record through the court's CM/ECF system on the 25rd day of February, 2021.

/s/ Brock C. Akers

Brock C. Akers